

Republic of Iraq
Federal Supreme Court
Ref. 149/ Federal / 2021



The Federal Supreme Court (F.S.C.) convened on 15.3.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The plaintiffs:

1. Head of the Patriots Movement/in addition to his post/
Basim Khalel Ebrahim.
2. Riyadh Abbas Abed Khalaf.
3. Khaled Miteb Yassin
4. Faris Miteb Yassin.
5. Anwar Fahem Kassar.
6. Turki Jadaan Abed.

Their agent, Basim Khazal Khashan lawyer Ahmed Saeed Musa.

The defendants:

1. The Speaker of the Council of Representatives / in addition to his position - his two deputies are Legal Counsel Haitham Majed Salem and Human Rights Officer Saman Mohsen Ibrahim.
2. Head of the Independent High Electoral Commission / in addition to his post - his deputy, Legal Counsel Ahmed Hassan Abd
3. The President of the Republic / in addition to his position - his deputy, the chief legal expert, Ghazi Ibrahim Al-Janabi.

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The claim:

The plaintiffs claimed, through their attorneys, that they are challenging the constitutionality of Articles (13), (16) and (46) of the Council of Representatives' Elections' Law No. (9) of 2020, and the electoral districts schedule attached to it, for inconsistency with Articles (2/first/b, c) and (5), (14) and (16) of the Constitution for the following reasons:

First: The quota for women is complementary: Article (49/first) of the constitution obligates the Iraqi legislator to enact an election law aimed at achieving a representation rate for women that is not less than a quarter of the number of members of the Council of Representatives this requires that the law does not prevent women from winning more than a quarter of the seats in the Council of Representatives, with the votes they obtain through equal competition in the elections. And that the law completes the required number of women to achieve the quarter percentage in the Council of Representatives, if they are unable to achieve it with the votes they obtain from the electorate. Achieve a quarter. Clause (16/first) of the Council of Representatives election law, and Article (49/fourth) of the constitution aim to achieve the percentage of women's representation of no less than a quarter of the number of members of the Council of Representatives (83 women), and apply it to the results of voting in the 2021 elections, without being restricted this percentage must be achieved by allocating seats to (26) winning candidates only to complete the required number of women in the Council of Representatives. Item (Second) of Article (16) of the Election Law stipulates that the representation of women must be no less than (25%) of the number of members of the Council of Representatives in each governorate, and this requires that the

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minimum number of members of the Council of Representatives be (87) women, which contravenes Article (49/4) of the Constitution, which requires that the minimum number of members of the Council of Representatives be (83) women. However, the electoral districts table did not achieve this percentage in four governorates: (Baghdad, Nineveh, Babil and Basra), and according to the preliminary results announced by the Electoral Commission, this percentage was achieved in Baghdad governorate with the victory of two women in constituency (11) and two women in constituency (15), as well as in Nineveh governorate with the victory of two women in constituency (7), and the percentage of women in the governorate of Babil and Basra remained less than a quarter of the number of members of the Council of Representatives in these two governorates, and the tables attached to the law divided the electoral district seats into (the seats with the highest votes), and all candidates compete for these seats In the constituency, men and women, and (women's seats) for which competition is restricted to women without men, and according to this division, men and women retain the seats with the highest votes they win with the votes they get, and (women's seat) in the constituency is allocated to the losing woman who will not It is able to win one of the (highest votes), and it is not permissible to replace it, or allocate its seat to a man. The preliminary results announced by the Electoral Commission showed the victory of (97) women, of whom (57) women won with the votes they obtained and (40) losing women who became winners by replacing them with a winning candidate who obtained a greater number of votes in the same constituency, and this contradicts the result that led to the application of Article (49/First) of the Constitution, and Clause (First) of Article (16).

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Second: One of the reasons for ruling the unconstitutionality of Article (13) is that item (first) of it allocates nine seats to the quota of components, and item (second) of it allocates one seat to the Yazidi component in Nineveh Governorate, and restricting the right to run for this seat to the sons of this component residing in this province, and deprived its sons residing in Dohuk province, who make up a large proportion of this component, the right to run and vote to choose their representative in the Council of Representatives, the law granted all the people of Nineveh Governorate, regardless of their nationality and religion, the right to vote to choose the representative of the Yazidi component in the Council of Representatives, while the members of the component themselves were deprived of this right because of their residency in a governorate other than Nineveh Governorate. Under item (third) above, the seats allocated to the quota for Christians and Sabeen-Mandaeans became within one electoral district, and allowed all Iraqis, regardless of their nationality and religion, to choose the representatives of these two components in the Council of Representatives, and this is a distinction between these two components on the one hand and the Yazidi component on the other, Also, granting the right to choose a representative of the components to include all Iraqis contravenes Article (49/first), because the representatives of the components will reach the Parliament with votes other than the sons of the components themselves.

Third: One of the reasons for ruling the unconstitutionality of Article 46 is that if the winning candidate fails to take the constitutional oath within one month from the date of the first session, the next candidate in terms of the number of votes on the list will replace him, and this contradicts the principle of equality. Based on

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the foregoing, the plaintiffs requested the Federal Supreme Court to rule that Articles (13), (16) and (46) and the constituency schedule attached to the law are unconstitutional because they conflict with Articles (2/first/b, c), (5) and (14) and (16) and (49) of the constitution. The case was registered with this court in No. (149/Federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's internal system No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First).) of the same system, so the attorney of the first defendant responded with the answer list dated (30/11/2021) and asked for the case to be dismissed as a form for the lack of the conditions of Article (6) of the court's internal system in terms of the availability of interest and the achievement of damage. Objectively, he replied that allocating five seats for Christians in five governorates, while allocating one seat (quota) for each of the other components, does not make Article (13) the subject of appeal unconstitutional, and that this was a legislative option. Also, the reason for not granting a quota for a specific component in a particular governorate is the failure to conduct a population census, which is the decisive factor in determining the number and density of the population in any governorate. And that Article (49/first) of the constitution states (The Council of Representatives is composed of a number of members. They represent the entire Iraqi people...etc) and that granting a quota to the components was the goal of the presence of representatives who represent the representatives in all of these representatives. All the Iraqi people, and the voter is free to vote for the candidate who finds that he is the best representative of him, even if he is from another

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component. As for the challenge to the constitutionality of Articles (16) and (46) of the law, the Federal Supreme Court has already decided on this by virtue of its decisions No. (44/federal/2021) and (144/federal/2021), and they became an argument with the provisions they adjudicated, their lawsuit become obligatory to be dismissed because it has already been decided upon. In addition, the tables attached to the Council of Representatives elections law, the subject of the appeal, came as a legislative option in accordance with the competence of the Council of Representatives to legislate federal laws under Article (61 / first) of the constitution. Therefore, the attorneys of the first defendant requested all expenses, the lawsuits and the plaintiffs' charges and charging him the fees. The second defendant responded with the answer statement dated November 29, 2021, which included formal and objective arguments, the conclusion of which is that the Independent High Electoral Commission is an independent and impartial professional body that enjoys legal personality and financial and administrative independence and is subject to the oversight of the Council of Representatives and undertakes the organization and implementation of the types of elections and referendums based on what is stated in Article (1) From the Law of the Independent High Electoral Commission No. (31) of 2019 and therefore it is an executive body for election laws issued by the legislative authority and not a legislative body, so it cannot be an opponent in this case. It also issued instructions for distributing seats and addressed the issue of achieving a quota for women in a manner consistent with the plaintiffs' approach in their lawsuit, so this objection is rejected in form and substance. He requested that the case be dismissed because the litigation was not directed, and the decision

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regarding the appeal was preceded by Article (46) of the law. The third defendant's attorney responded with the answer statement dated November 30, 2022, which included his pleas, in which he concluded a request to dismiss the case for the absence of a constitutional violation and the prior decision regarding the appeal to Article (46) of the law, and requested that the plaintiffs be charged with fees, expenses and attorney fees. After completing the procedures required by the court's internal system, 12/8/2021 was set as the date for the pleading, in accordance with Article (2/Second) of it, and the parties were informed of it. In addition to his post, the legal advisor Haitham Majed Salem and the human rights employee Samen Mohsen Ibrahim, who attended on behalf of the second defendant, in addition to his post, the legal employee Ahmed Hassan Abd, who attended on behalf of the third defendant, in addition to his post as the chief legal expert, Ghazi Ibrahim Al-Janabi. He requested to rule according to what it stated, adding that the first plaintiff is a political party registered within the Victory Alliance in the Political Parties Department at the Independent High Electoral Commission, while the rest of the plaintiffs are candidates for the 2021 elections. For the reasons stated in each of them, and since the court has completed its audits and there is nothing left to be said, it decided the conclusion of the pleading, and issued the following ruling:

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiffs requested to call upon the defendants (the Speaker of the Council of Representatives / in addition to his position and the Head of the Independent High Electoral

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Commission / in addition to his position and the President of the Republic / in addition to his position) to plead and rule the unconstitutionality of Articles (13, 16 and 46) and the constituency schedule attached to the law, due to its conflict with Articles (2/First/B, C), (5), (14), (16) and (49) of the Constitution, and through what was stated in the plaintiffs' lawsuit and the defenses of the defendants' attorneys in addition to their positions, the court reached the following conclusions :

1. Based on the provisions of Article (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and Article (6) of the bylaw No. (1) of 2005, which requires in all its paragraphs that the plaintiff have an interest in a case, direct and affecting his legal, financial or social position, and that the plaintiff submits evidence that a real harm has been inflicted on him as a result of the legislation to be repealed, that the harm is direct and independent in its elements, that the harm is not in future or unknown, and that the plaintiff has not benefited from part of the text required to be repealed and that the text required to be repealed has been applied to the plaintiff or is intended to be applied to him, and the Federal Supreme Court finds that resorting to the constitutional judiciary should not be arbitrary for everyone who wanted it, but rather the interest must be available in the case, and the case is not valid from others, since the basis of the case is the existence of The need for legal protection that is required when assaulting or threatening to attack a right or a legal position and to achieve the practical benefit of filing a lawsuit, which the plaintiff wishes to obtain to protect that right, and that the interest in the direct constitutional lawsuit is It must be a legal interest in the sense that the constitution guarantees its protection, because the right

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protected by the constitutional case is a right guaranteed by the constitution and approved by the law in implementation of that, and for the interest to be considered legal, there must be a violation of one of the constitutional rights, and it is not sufficient for the direct personal interest to be a condition for accepting the case Constitutionalism that the contested legislative text is contrary to the constitution, but rather this text must have been applied to the plaintiff and violated one of his rights mentioned above, as the abstract theoretical interest is not sufficient to accept the direct constitutional case, as is the case for the interest that aims to establish an abstract constitutional ruling on a specific subject for the purposes of academic or in defense of ideal values to be established or a kind of expression of a personal point of view or to establish a certain concept in a particular issue that did not result in harm to the appellant, and the interest must be present and available at the time of the case and until a judgment is issued in it, so the plaintiffs' suit deserves a response against the plaintiff The first (the Speaker of Parliament in addition to his post).

2. The defendant is required to be a litigant whose recognition results in a judgment estimating the issuance of an acknowledgment from him, and to be sentenced or obligated to something based on the assessment of the evidence of the case, based on Article (4) of the Civil Procedures Law No. (83) of 1969 as amended, and this is not verified in Filing a case against each of the second defendants, the head of the Independent High Electoral Commission in addition to his post, and the third and the president of the republic in addition to his post in their request to challenge the constitutionality of the aforementioned articles of the Council of Representatives Elections Law No. (9) of

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2020, and since the litigation, if it was not directed, the court judges, even if it is from on its own, the case is dismissed without entering into its basis based on Article (80/1) of the Civil Procedure Code above, so the plaintiffs' lawsuit deserves a response against each of the two defendants (the second is the head of the Independent High Electoral Commission / in addition to his position) and the third (the President of the Republic / in addition to his position) The litigation was not directed, so the Federal Supreme Court decided to dismiss the plaintiffs' suit in form and to charge them fees, expenses and attorney fees for the defendants' attorneys, an amount of one hundred thousand dinars to be distributed according to the law. The decision was issued by majority based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 as a final and binding ruling for all authorities and publicly understood in 11/ Sha'ban 1443 AH corresponding to 3/15/2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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